IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1285 of 2002
With
FIRST APPEAL No. 239 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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DHARMSHIBHAI MAGANBHAI & 1 - Appellant(s)

Versus

R.K.CEMENT SERVICES (I) PVT. LTD. & 2 - Defendant(s)

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Appearance :
MR AM PAREKH for Appellant(s) : 1, 1.2.1,1.2.2
None for Respondent(s) : 1,
MR MAULIK J SHELAT for Respondent(s) : 2 - 3.
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 10/02/2006

ORAL JUDGMENT

1. Both these appeals are preferred from the same judgment and order dated 29.10.2001 of the Motor Accident Claims Tribunal, Valsad in Motor Accident Claim Petition No.209 of 1991 whereby the original claimants were ordered to be paid Rs.49,000/- with

9% interest from the date of the petition by the owner and the driver of the vehicle causing accidental injury and death of the son of the claimants. The owner of the vehicle has filed First Appeal No.239 of 2006 mainly with the grievance that the insurer of the vehicle was erroneously not directed to indemnify the appellant; and the original claimants have preferred the appeal for enhancement of the amount of compensation.

2. The claimants are the parents, aged 60 and 55, of the deceased victim of the accident, aged 18, who was earning Rs.1200/- per month as a labourer. He was travelling by truck No.GJ-15-T-1232 on 2.11.1990 near Vapi. Another truck bearing Registration No.GQA 7107 coming from opposite direction collided with the truck in which the deceased was travelling, near Sonwada village and he received serious injuries resulting into his death after being admitted and treated in Civil Hospital, Surat. The claimants approached the Claims Tribunal with a claim of Rs.1,00,000/- and, after recording and appreciating the evidence, the Tribunal found that the drivers of both the vehicles were responsible for the accident, but the driver of Truck No.GQA 7107 was more responsible and attributed 80% negligence to him. Having regard to the age of the deceased and the age of the claimant-parents and taking notional income of the deceased to be Rs.15,000/- per year, the

dependency of the parents was taken at Rs.5,000/- per year and applying the multiplier of 15, Rs.75,000/- was assessed as the total future loss of income suffered by the claimants. The Tribunal awarded Rs.10,000/- towards loss of estate, Rs.2000/- towards funeral expenses and Rs.5,000/- towards pain and suffering. Thus, holding the claimants to be entitled to get Rs.92,000/-, 20% thereof was deducted as the amount towards contributory negligence and deducting Rs.25,000/- received by the claimants by way of interim compensation, the sum of Rs.49,000/- was awarded by the impugned order. It was recorded that the claimants had not produced the insurance policy of the truck involved in the accident, i.e. GQA 7071, and, therefore, only the driver and the owner of the truck were ordered to jointly and severally pay the amount of compensation.

3. It was fairly conceded by the learned counsel that the Tribunal was in error in recording the absence of the insurance policy of the truck insofar as a copy of the insurance policy valid for the relevant period was produced before the Tribunal vide list of documents at Exh.32. There was no controversy about the fact that that truck was insured with the Oriental Insurance Company Ltd. in terms of the policy of which a copy was produced before the Tribunal and, therefore, the insurance company was required to indemnify the owner in the

matter of payment of compensation, interest and costs.

4. As for the appeal of the claimants, it was clear that the award of Rs.10,000/- for the loss of estate was on the lower side and, following the judgment of this Court in **GUJARAT STATE ROAD TRANSPORT CORPORATION v. SURYAKANTBEN [2001 (2) GLR 1777],** Rs.20,000/- ought to have been awarded. It was also clear from the record that the deceased had suffered severe pain, shocks and suffering before he succumbed to the injuries after about a week of the accident and, therefore, the award of Rs.5,000/- was inadequate and the claimants ought to have been awarded minimum of Rs.10,000/- under that head.

5. Accordingly, both the appeals are required to be, and are hereby partly allowed, holding that the Oriental Insurance Company Ltd. is liable to pay the amount of total compensation as modified by this judgment. And, the original claimants, i.e. the appellants in First Appeal No.1285 of 2002, are entitled to Rs.61,000/- (on account of addition of Rs.10,000/- + Rs.5,000/-) with interest @ 9% from the date of the claim petition till realization with proportionate costs. The remaining part of the impugned order as regards disbursement shall remain intact. The parties other than the original claimants shall bear their own costs. Award shall be drawn

accordingly. The appeals accordingly stand partly allowed. Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)